

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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DONALD R. LOMAX, Individually :  
and on Behalf of All Others Similarly Situated, :

Plaintiff, :

-against- :

INTERNATIONAL BUSINESS MACHINES :  
CORPORATION, :  
MARK LOUGHRIDGE :

Defendants. :

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FAHED AL-ARAJ, Individually :  
and on Behalf of All Others Similarly Situated, :

Plaintiff, :

-against- :

INTERNATIONAL BUSINESS MACHINES :  
CORPORATION, :  
SAMUEL J. PALMISANO, :  
MARK LOUGHRIDGE :

Defendants. :

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ALVIN K. HELLERSTEIN, U.S.D.J.:

05 Civ. 6279 (AKH)

**ORDER DENYING DISCOVERY**

05 Civ. 6729 (AKH)

These are class actions brought under the Securities laws to seek damage recoveries for allegedly false and misleading disclosures. There appear to be two actions filed, and Joseph and Nilda Anchinovski were appointed, on consent, as lead plaintiffs by order dated March 29, 2006. A consolidated amended complaint has not yet been filed, nor have the legal sufficiency of the claims been adjudicated.

Defendant International Business Machines Corporation (“IBM”) is the respondent in an investigation by the Securities and Exchange Commission (the “SEC”). A

formal order apparently was issued, and plaintiffs claim that the SEC is investigating substantially the same issues as those that are involved in these lawsuits. Plaintiffs claim also that IBM has made a substantial production of documents to the SEC.

In Securities class actions, discovery proceedings are stayed during the pendency of motions to dismiss except if discovery is necessary "to preserve evidence or to prevent undue prejudice" to the party seeking discovery. Plaintiffs nevertheless filed a Rule 34 demand for production of copies of that which IBM produced to the SEC. Plaintiffs assert that they will be unduly prejudiced without such production, but the assertion is not supported by any facts.

The cases that grant production to avoid prejudice are distinguishable. See Seippel v. Sidley, Austin, Brown & Wood, LLP, 2005 WL 388561, at \*1 (S.D.N.Y. Feb. 17, 2005); In re WorldCom, Inc. Sec. Litig., 234 F. Supp. 2d 301, 306 (S.D.N.Y. 2002). No one in this case appears to suffer discrimination in relation to any other contending party, or is able to describe some form of damage that will be caused by waiting a few months more.

Accordingly, plaintiffs' motion is denied. Defendant IBM is ordered, however, to copy and preserve all documents produced to the SEC, and memorialize the source-files or places from which the documents were gathered and the custodians of those files or sources.

SO ORDERED.

Dated: New York, New York

March 31, 2006



ALVIN K. HELLERSTEIN  
United States District Judge